# No. 12,869

IN THE

# United States Court of Appeals

## For the Ninth Circuit

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RAYMOND WRIGHT,
*Appellant,*

vs.

UNITED STATES OF AMERICA,
*Appellee.*

## BRIEF FOR APPELLANT.

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### STATEMENT.

This is an appeal by the defendant, Raymond Wright, from a judgment of conviction of the District Court for the District of Alaska, Fourth Division, under which appellant was convicted of the crime of the illegal and felonious possession and control of a narcotic drug commonly referred to as marihuana in violation of Section 40-3-2 of the Alaska Compiled Laws Annotated 1949.

A search was made of the building and premises near Fairbanks, Alaska, known as the 69 Club and evidence was introduced that 16 cigarettes containing marihuana were found on the floor of the public room of said club behind a chair, and evidence was

also introduced, over the objection of appellant, that some tobacco cans were found in the grass in the vicinity of said building which contained a small portion of marihuana. No attempt was made to show that the appellant, Raymond Wright, owned said club and the direct and undisputed evidence of Vernestine Wright was to the effect that she was the owner of said club. No attempt was made to show who was the owner of said land where the cans were found in the grass in the vicinity of said premises.

Evidence was admitted, over the objection of appellant, that both of the defendants prior to the 4th day of August, 1950, had sold marihuana. This evidence was admitted after it had been first excluded by the Court and after hearing argument by counsel. The purpose for which this evidence was admitted was never explained to the jury, although the appellant objected to its admission for the reason that it was inadmissible for any purpose, and after the Court had admitted the evidence it was called to the attention of the Court that if it were admissible for any purpose it was the duty of the Court to instruct the jury and limit the evidence to the purpose for which it was introduced. But this the Court refused to do. (T.R. pp. 245, 246, 247.)

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**POINTS AND AUTHORITIES.**

"Where on cross-examination of accused, charged with selling narcotics at a specific time and place, he was asked whether or not he had

been engaged in business of selling narcotics, which was entirely collateral to the matter with which he was charged, his reply thereto, denying such fact, bound the prosecution, and it was error to permit prosecution to offer rebuttal evidence that defendant had been so engaged."

"(4) The effect of the admission of the testimony so complained of was to show or tend to show against the accused the commission of crimes independent of that for which he was on trial. With certain exceptions not applicable here, it is the well-settled rule that this cannot be done. Boyd v. United States, 12 S. Ct. 292, 142 U.S. 450, 35 L. Ed. 1077; Newman v. United States (C.C.A.) 289 F. 712. In People v. Molineux, the court said: 'This rule, so universally recognized and so firmly established in all English-speaking lands, is rooted in that jealous regard for the liberty of the individual which has distinguished our jurisprudence from all others, at least from the birth of Magna Charta.' "

*Smith v. United States,* 10 F. (2d) 787, 788.

"In the civil law and very early in the common law, evidence of other crimes was admitted, on the theory that a person who has committed one crime is apt to commit another. The inference is so slight, the unfairness to the defendant so emphasized, the difficulty and delay attendant upon trying several cases at one time so great, and the confusion of the jury so likely, that for more than 200 years it has been the rule that evidence of other crimes is not admissible."

*MacLafferty v. United States,* 77 F. (2d) 719;

*Cucchia v. United States,* 17 F. (2d) 86;

*Smith v. United States,* 10 F. (2d) 787;
*Wigmore on Evidence* (2d Ed.), Section 194;
16 *C.J.* 586.

"The scope and purpose of testimony concerning similar offenses, has been laid down in the Supreme Court of the United States in the cases of Boyd v. United States, 142 U.S. 554, and Hall v. United States, 150 U.S. 76. Only an exceptional cases is the proof of such transactions admissible. Where the case falls within the exception the proof must be clear and convincing."

*Gart v. United States,* 294 Fed. 66;
*Marshall v. United States,* 197 Fed. 511;
*Fish v. United States,* 215 Fed. 544;
*Niederlucke et al. v. United States,* 21 Fed. (2d) 51.

"In prosecutions for illegal sale, furnishing or possession of narcotics evidence of other offenses is inadmissible if it does not come within any recognized exception to the general rule excluding such evidence, as where the other offenses are only remotely connected with the offense prosecuted, or do not tend to prove accused's guilt thereof."

22 *C.J.S.* Sec. Q, p. 1156.

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**ARGUMENT.**

In view of the Court's refusal to limit the evidence of the commission of other crimes of which appellant had no notice and the Court's Instructions No. 1, (b) (2) that neither of the defendants, either jointly or

separately, was authorized pursuant to the provisions of the said Narcotics Act to have possession or control of the narcotic drug marihuana, the jury could easily have found that the defendant was guilty because of sales of which the witnesses did not claim to know the names of the purchasers and which were not included in the charge contained in the indictment.

In view of the opinion of this Court in the case of *Smith v. United States,* it would seem that in a case for possession or sale of narcotics evidence of previous violations are not admissible. In this case the defendant was asked if he had ever engaged in the sale of narcotics prior to the date charged in the indictment and he testified that he had never sold narcotics. Over the objection of his attorney evidence was admitted of previous sales and the Court held that the government was bound by his testimony and that a case of this kind does not come within the exceptions relied upon by the United States Attorney in the case now before this Court.

The tobacco cans, which it was alleged contained a certain amount of marihuana and which were not found upon the premises of the defendant, or which if they were no attempt was made to prove that either one of the defendants owned the premises, were admitted over the objections of appellant. There was no evidence that either one of the defendants had ever been in possession of these cans and there was no evidence offered which tends to prove that either one of the defendants owned these premises where the cans were found in the grass. The cans were never

introduced in evidence and the final disposition of the cans were made by the government witness, Power G. Greer, when he testified that the cans were cut into pieces by his six-year-old son with a pair of scissors. (T.R. p. 49.)

Two of the witnesses who testified in regard to other crimes were witnesses who had been accused by appellant of stealing from him the sum of $800.00 and they gave no information to the officials in regard to any of the acts which they claim had been committed by appellant until after their arrest, and the Court excluded the testimony both on cross-examination of these witnesses and upon the direct examination of appellant in regard to the transaction and which evidence was offered for the purpose of showing the feeling and motive of the witnesses who testified in regard to other crimes not charged in the indictment.

The appellant was given no time by the Court to produce evidence in regard to the other crimes in which evidence was offered over the objection of appellant to produce evidence to contradict the charges, and in not one case was the name of the purchasers disclosed. In other words, proof of sales was used by the Court notwithstanding the fact that the names of purchasers were not disclosed. And the evidence shows that the officers made no attempt to find out whether or not the evidence was true or false. No defendant in a case of this kind and with no chance to contradict the testimony could expect to be acquitted by a jury even though the evidence of the crime

charged in itself was insufficient to warrant a conviction, or at least to raise in the minds of the jurors a reasonable doubt as to the guilt of the accused.

In view of the Court's rulings in this case, the Court's instructions to which exceptions were taken, the refusal of the Court to even attempt to limit the evidence in regard to other crimes and to admit evidence of other crimes which according to all of the authorities was inadmissible, it would seem that the judgment of conviction should be reversed and a new trial ordered.

Dated, Fairbanks, Alaska,
July 6, 1951.

Respectfully submitted,
JULIEN A. HURLEY,
*Attorney for Appellant.*